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State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

Outgoing
C0070045
#3719
OK

February 28, 2011

Gina Rau, Environmental Manager
Headwaters, Incorporated
10653 South River Front Parkway, Suite 300
South Jordan, Utah 84095

Subject: Completion of Midterm Review, Task ID #3719, Headwaters, Inc., COVOL Coal Processing Plant, Permit C/007/0045

Dear Ms. Rau:

On December 29th, 2010, Headwaters, Inc. was informed that the Division of Oil, Gas and Mining (the Division) had commenced a midterm permit review for the COVOL Coal Processing Plant. As part of the midterm review a field inspection was conducted on February 23rd, 2011. In addition, the following items were reviewed:

- A. Review of the Plan to ensure that the requirements of all permit condition, division orders, notice of violation (NOV), abatement plans, and permittee-initiated Plan changes approved subsequent to permit approval or renewal (whichever is the most recent) are appropriately incorporated into the Plan document.
- B. Ensure that the Plan has been updated to reflect changes in the Utah Coal Regulatory Program which have occurred subsequent to permit approval or renewal.
- C. Review applicable portions of the permit to ensure that the Plan contains commitments for application of the best technology currently available (BTCA) to prevent additional contributions of suspended solids to stream flows outside of the permit area.
- D. Evaluate the compliance status of the permit to ensure that all unabated enforcement actions comport with current regulations for abatement; verify the status of all finalized penalties levied subsequent to permit issuance or permit renewal, and verify that there are no demonstrated patterns of violation (POV). This will include an AVS check to ensure that Ownership and Control information is current and correct.
- E. Evaluate the reclamation bond to ensure that coverage adequately addresses permit changes approved subsequent to permit approval or renewal, and to ensure that the bond amount is appropriately escalated in current-year dollars.



F. Evaluate the permit for compliance with variances or special permit conditions.

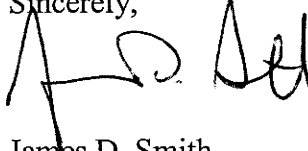
G. Optional for active mines, mandatory for reclamation only sites: conduct a technical site visit in conjunction with the assigned compliance inspector to document the status and effectiveness for operational, reclamation, and contemporaneous reclamation practices undertaken on predetermined portions of the disturbed area to minimize, to the extent practicable, the contribution of acid or toxic materials to surface or groundwater, and to otherwise prevent water pollution.

The midterm review has now been completed and will now be closed, however, the Division has identified deficiencies that must be addressed. The deficiencies have been included with this letter (See Attached). The name of the author for each of the respective deficiencies has been provided.

Your response to these deficiencies will need to be submitted as an amendment to your MRP and will be processed as a separate task. Please submit the required amendment with the accompanying C1 and C2 forms by no later than April 4, 2011.

If you have any questions regarding these requirements or the Midterm Review process, please don't hesitate to call me at 801-538-5262 or Steve Christensen at 801-538-5350.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.D. Smith', written over a horizontal line.

James D. Smith
Permit Supervisor

COVOL MIDTERM PERMIT REVIEW
Task #3719
Deficiency List

Team Review Members:

Priscilla Burton (PB)

Joe Helfrich (JH)

Pete Hess (PH)

Angela Nance (AN)

R645-301-231.400: (PB) Please provide as-built volumes of the two topsoil stockpiles shown on Plate 5-1 and update MRP Section 2.3.1.4 accordingly.

R645-300-143 and R645-301-112.410: (JH) Page 1-5 of the MRP needs to be updated to reflect the current permit number assigned by the Division, C0070045. Page 3-5 and Appendix A figure 3 in chapter 3 need to be updated to include the results of the Burrowing Owl survey that was conducted in the Spring of 2010 as well as any additional information included in the study completed by Mt. Nebo Scientific. Additional studies or reports are often times submitted as an additional appendix so as to avoid pagination problems.

R645-301-830.140: (PH) The Permittee must submit an updated reclamation cost estimate using 2011 unit costs obtained from R.S. Means with other supporting information, as needed.

R645-301-112.330: (AN)

Update all officer and director information for inclusion into the MRP.

Headwaters Incorporated

1. The MRP shows **Steven G. Stewart, Treasurer** with a Begin Date of 09/04/2007, however, AVS shows Mr. Stewart with a Begin Date for Treasurer as 10/01/05. *Please address this discrepancy by either correcting this information in the MRP to show the same date as is in AVS or by providing a Secretary's Certificate to correct the AVS with the date shown in the MRP.*

Headwaters Energy Services Corporation

1. The MRP shows **Harlan M. Hatfield, Vice President** with a Begin Date of 04/09/2003, however, the AVS shows him as Vice President with a Begin Date of

05/12/04. *Please address this discrepancy by either correcting this information in the MRP to show the same date as is in AVS or by providing a Secretary's Certificate to correct the AVS with the date shown in the MRP.*

2. The MRP shows **Harlan M. Hatfield, Assistant Secretary** with a Begin Date of 04/09/2003. The AVS shows that Mr. Hatfield ended his position as Assistant Secretary on 01/03/06. *Please address this discrepancy by either correcting the MRP or providing a Secretary's Certificate to correct the AVS.*
3. The MRP shows **Scott Ballard, Treasurer** with a Begin Date of 04/15/2009. The AVS shows that Mr. Ballard ended his position as Treasurer on 04/01/2010. *Please address this discrepancy by either correcting the MRP or providing a Secretary's Certificate to correct the AVS.*
4. The AVS shows **Scott Jackson, Treasurer** with a Begin Date of 04/01/2010. This information is not in the MRP. *Please update the MRP to include this information.*
5. The MRP shows **Jason T. Day, Assistant Secretary** with a Begin Date of 05/12/2004. The AVS shows that Mr. Day ended his position as Assistant Secretary on 04/01/2010. *Please address this discrepancy by either correcting the MRP or providing a Secretary's Certificate to correct the AVS.*
6. The AVS shows **Mike Mildenhall, Assistant Secretary** with a Begin Date of 04/01/2010. This information is not in the MRP. *Please update the MRP to include this information.*

COVOL

1. The MRP shows **Harlan M. Hatfield, Manager** with a Begin Date of 08/09/2004, however, the AVS shows him with a Begin Date of 06/01/2006. *Please address this discrepancy by either correcting the MRP or providing a Secretary's Certificate to correct the AVS.*
2. The MRP shows **Scott Ballard, Treasurer** with a Begin Date of 04/17/2009. The AVS shows that Mr. Ballard ended his position as Treasurer on 04/01/2010. *Please address this discrepancy by either correcting the MRP or providing a Secretary's Certificate to correct the AVS.*
3. The AVS shows **Scott Jackson, Treasurer** with a Begin Date of 04/01/2010. This information is not in the MRP. *Please update the MRP to include this information.*
4. The MRP shows Curtis J. Brown as an Officer. The AVS lists Mr. Brown as a Secretary. *Please update the MRP to reflect Mr. Brown's specific position.*
5. The MRP shows **Jason T. Day, Assistant Secretary** with a Begin Date of 05/12/2004. The AVS shows that Mr. Day ended his position as Assistant Secretary on 04/01/2010. *Please address this discrepancy by either correcting the MRP or providing a Secretary's Certificate to correct the AVS.*

6. The AVS shows **Mike Mildenhall, Assistant Secretary** with a Begin Date of 04/01/2010. This information is not in the MRP. *Please update the MRP to include this information.*